Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Royal City Fire Supplies Ltd v. The Owners, Strata Plan BCS3444*, 2018 BCCRT 812

B E T W E E N :

Royal City Fire Supplies Ltd

APPLICANT

A N D :

The Owners, Strata Plan BCS3444

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. In June and August 2016, the applicant, Royal City Fire Supplies Ltd, conducted fire inspections at the respondent strata, The Owners, Strata Plan BCS3444 (strata).

2. The strata says that its property manager hired the applicant to conduct the fire inspections without authority from the strata. The strata also says that the applicant's work provided the strata with no value. The strata refuses to pay the applicant's invoice of $4,984.18.

3. The applicant is represented by an employee. The strata is represented by the strata council president. The applicant initially named the respondent as D'corize Strata Plan BCS3444, D'corize being the name of the building. The strata, in its submissions, stated that it is The Owners, Strata Plan BCS3444, which I find is the correct legal name of the strata. I order that the style of cause is amended accordingly, as there is no dispute about the correct name of the strata.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

    a. order a party to do or stop doing something;

    b. order a party to pay money;

    c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. Did the strata's property manager have the authority to contract with the applicant?

    b. If so, has the applicant proven that it is entitled to the full amount of its invoice?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

10. The strata is a high-rise residential strata in Surrey. The applicant is a company that conducts fire inspections and sells fire suppression supplies.

11. The strata first hired the applicant do conduct its annual fire inspection in 2011. The strata's property manager at the time (former property manager) hired the applicant on the strata's behalf. The former property manager also hired the applicant to perform fire inspections and other work from 2012 through 2015.

12. The strata switched to a new property manager (property manager) in early 2016. On May 26, 2016, the property manager emailed the applicant requesting that the applicant conduct the annual fire inspection.

13. The strata says that in 2015, the strata council decided not to retain the applicant for subsequent years. There is no evidence that the strata council's decision was communicated to the applicant or to the property manager.

14. One of the applicant's technicians attended at the strata on June 22, 2016. The applicant says that all residents knew in advance that it was attending to conduct the fire inspection. On the day of the inspection, a resident told the technician that the applicant may not get paid.

15. The strata says that this resident was, in fact, the strata council president. The applicant says that the resident did not identify themselves as the strata council president. The strata did not give any other indication to the applicant that it did not want the applicant's services. The applicant says that no one contacted their office. The applicant says that the strata council president permitted access to their strata lot as part of the inspection, which is confirmed by the report the applicant sent the property manager.

16. The applicant emailed the property manager on June 22, 2016, about the resident telling the technician that the applicant may not get paid. The property manager promptly responded by telling the applicant that the resident did not speak for the strata corporation and that the strata would pay for the inspection.

17. On July 6, 2016, the applicant sent the property manager an invoice for $4,984.18 along with a fire inspection report. While the applicant refers to other unpaid invoices in its submissions and evidence, they are not part of this dispute.

18. On August 13, 2016, the applicant performed a follow up inspection and reported the results to the property manager.

19. The City of Surrey sent the strata a letter on September 7, 2016, which informed the strata of a bylaw violation in relation to backflow preventer testing. This letter was in relation to 2015 testing and was not the first warning that the City of Surrey had sent the strata. At this point, the strata demanded copies of the reports and other materials from the applicant.

20. The applicant initially refused to send its reports directly to the strata unless the strata paid their bill. The strata refused to pay their bill unless they received the reports. Eventually, the applicant sent their reports to the strata on October 4, 2016, but the strata still did not pay their bill.

21. There is no evidence of any further communication from the City of Surrey about the bylaw violation. The applicant says that they were not retained to test the backflow preventers in 2015 or 2016.

22. The strata says that the property manager did not have the authority to enter into a contract on behalf of the strata. The strata submits that it cannot be liable for the property manager's actions because the property manager was not the strata's legal representative, tenant, partner or employee. This submission is not accurate. There are 2 ways that the property manager could enter into a valid agreement on the strata's behalf.

23. First, the strata can give the property manager actual authority. The strata provided a copy of the contract between it and the property manager. I agree with the strata that the agreement is limited to bookkeeping services and assistance with meetings. I conclude that the property manager did not have actual authority to enter into the contract.

24. Second, the property manager can have apparent authority to enter into agreements on the strata's behalf. If the property manager has apparent authority to enter into an agreement, the agreement is valid and enforceable even if the strata did not actually give the property manager authority to enter into the agreement.

25. The burden is on the applicant to prove that the property manager had apparent authority to enter into the agreement. The applicant must prove that the strata represented through its words or actions that the property manager had the authority to enter into the agreement. The applicant must also prove that they reasonably believed that the property manager had the authority to enter into the agreement. See *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295, at paragraphs 84 – 86.

26. With respect to the first part of the test, it is undisputed that the strata retained the applicant for several years prior to 2016 through the former property manager. The strata paid its invoices when the former property manager retained the applicant.

27. It is true that the strata changed property managers between the 2015 and 2016 fire inspections. However, there is no evidence that the strata told the applicant that the property manager did not have the authority to enter into contracts.

28. I find that by retaining the applicant through its former property manager from 2011 through 2015 the strata represented that the property manager had the authority to enter into the agreement.

29. With respect to the second part of the test, the strata submits that the applicant knew or reasonably ought to have known that the property manager did not have the authority to enter into the agreement.

30. The strata relies on the fact that it changed property managers. The strata says that the applicant should have confirmed the scope of the property manager's duties directly with the strata. I disagree. Because the former property manager had entered into agreements on behalf of the strata, I find that the strata had the obligation to inform the applicant that the property manager did not have the same authority. When the property manager reached out to the applicant to perform its annual services, I find the applicant acted reasonably taking the property manager's authority at face value.

31. The strata also relies on the strata council president's verbal warning to the applicant's technicians that the applicant may not get paid. The strata says that the applicant should have conducted reasonable due diligence in response to this comment, presumably by contacting the strata directly to confirm that the strata wanted to engage the applicant.

32. I agree with the applicant that in the context of a professionally managed building, it is not reasonable to expect that the applicant would have stopped working and investigated based on a verbal comment from a single resident. The strata does not dispute that the strata council president failed to identify themselves. The applicant took the reasonable step of immediately confirming its retainer with the property manager. The strata, which is represented in this dispute by the strata council president who gave this verbal warning, provided no explanation as to why it did not take any other steps to inform the applicant that the property manager did not have authority to hire the applicant or that the strata did not wish to hire the applicant.

33. The strata also relies on sections 3 and 4 of the *Strata Property Act* (SPA), which say that a strata corporation acts through its strata council and that the strata council cannot delegate their responsibilities unless there is a bylaw. The strata says that its bylaws do not provide for the delegation of the strata council's responsibilities, but did not provide a copy of the bylaws. This submission is inconsistent with the strata's past practice of retaining the applicant through the former property manager. Furthermore, there is no evidence that the strata gave the applicant a copy of its bylaws. The strata does not explain how the applicant should have known the specific provisions of the strata's bylaws. I reject this submission.

34. Finally, the strata relies on section 30(2) of the SPA. Section 30 of the SPA governs the validity of contracts where there is a defect in the election of a strata council member or a limitation on the authority of a strata council member. Section 30(2) states that if a person knows or should know about a defect or limitation in the authority of a strata council member, they cannot bind the strata to a contract.

Section 30(2) does not apply to situations where there is a limitation in the authority of a property manager, and therefore has no application to this dispute.

35. I find that the applicant's belief that the property manager had authority to hire the applicant was reasonable.

36. Therefore, the applicant has proven that the property manager had apparent authority to hire the applicant to perform the annual inspections. The agreement between the applicant and the strata is binding on the strata.

37. The strata argues that if there is a binding agreement between the parties, the applicant's work provided the strata with no value.

38. The strata relies on what it says is poor performance and excessive billing by the applicant in previous years. I find that the applicant's performance from prior to 2016 is irrelevant to this dispute, which is about the applicant's 2016 invoice.

39. As the applicant points out, there is no evidence that the City of Surrey fined the strata or that the strata retained another fire inspection contractor to redo any of the work the applicant was hired to do. Therefore, there is no evidence that the 2016 inspection was deficient. I find that there is insufficient evidence to support any reduction in the amount that the applicant charged for its services.

40. I therefore find that the applicant is entitled to payment of the July 6, 2016 invoice.

41. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of $175 in tribunal fees.

42. The applicant also claims dispute-related expenses totaling $840.83, broken down as follows:

    a. Cost of records office search: $80.33

    b. Cost of consultant to prepare small claims application: $750

c. Registered mail: $10.50

43. The applicant does not explain what a records office search is and does not provide any receipts to confirm that it spent the amount claimed. I decline to award this dispute-related expense.

44. The applicant claims $750 in consultant fees. It is not clear whether the consultant is a lawyer. Tribunal rule 132 says that except in extraordinary cases, the tribunal will not order one party to pay another party's fees for a lawyer or another representative. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. This is not an extraordinary case. I decline to award this dispute-related expense.

45. I find that the registered mail expense is reasonable.

46. The applicant is entitled to reimbursement of $175 in tribunal fees and $10.50 in dispute-related expenses.

ORDERS

47. Within 14 days of the date of this order, I order the strata to pay the applicant a total of $5,282.26, broken down as follows:

    a. $4,984.18 as payment for the applicant's July 6, 2016 invoice

    b. $112.58 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $185.50 for $175 in tribunal fees and $10.50 for dispute-related expenses.

48. I order that the name of the strata in the style of cause is amended to The Owners, Strata Plan BCS3444.

49. The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest, as applicable.

50. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

51. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member